

**Introduced by Senator Lieu**

February 20, 2013

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An act to add Section 1367.041 to the Health and Safety Code, and to add Sections 10127.45 and 10133.10 to the Insurance Code, relating to health care coverage.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 353, as introduced, Lieu. Health care coverage: language assistance.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A willful violation of the act is a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.

Existing law requires the departments to adopt regulations establishing standards and requirements to provide enrollees and insureds with access to language assistance in obtaining health care services. Existing law requires health care service plans and health insurers, if they exceed certain enrollment thresholds, to implement programs to assess the needs of enrollees and insureds, and to provide translation and interpretation for medical services and translation of vital documents, as defined, to enrollees and insureds, and to report to the respective departments regarding internal policies and procedures related to cultural appropriateness. Existing law provides that a health care service plan is in compliance with the requirements if it is required to meet and meets the same or similar standards, as imposed by the Medi-Cal program.

This bill would require a health care service plan that advertises or markets in a language other than English, as provided, and that does

not meet certain enrollment thresholds, to translate into that language specified documents. This bill would also require an insurer that markets, advertises, or produces educational materials for health insurance policies in a language other than English, as provided, and that does not meet certain enrollment thresholds, to translate into that language specified documents. This bill would require both those health care service plans and insurers to use trained and qualified translators.

Existing law prohibits a health care service plan, except as provided, from publishing or distributing, or allowing to be published or distributed on its behalf, any advertisement unless a true copy of the advertisement has first been filed with the Director of the Department of Managed Health Care at least 30 days, or any shorter period of time by the director's rule or order, prior to its use and the director, by notice, has not found the advertisement, wholly or in part, to be untrue, misleading, deceptive, or otherwise not in compliance with the applicable provisions, and specified the deficiencies, within the 30 days, or any shorter period of time by the director's rule or order. The director, by rule or order, may classify plans and advertisements and exempt certain classes, wholly or in part, either unconditionally or upon specified terms and conditions, or for specified periods, from these requirements.

This bill would extend the approval requirements and exemptions to health insurers, as specified, and require the Department of Insurance to perform the related functions. The bill would prohibit the department from exempting certain classes of policies and advertisements from the requirements where it concerns new products or products offered by health insurers with a record, in the past 5 years, of violations of these provisions.

By placing additional requirements on health care service plans, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1367.041 is added to the Health and  
2     Safety Code, to read:

3     1367.041. (a) A health care service plan that advertises or  
4     markets in a language other than English that does not meet the  
5     minimum enrollee thresholds established under Sections 1367.04  
6     and 1367.07, or the regulations adopted thereunder, shall translate  
7     into that language all of the following documents:

8     (1) Welcome letters or notices of initial coverage, if provided.

9     (2) Applications to participate in a program or activity or to  
10    receive a benefit or service.

11    (3) Letters containing important information regarding eligibility  
12    or participation criteria.

13    (4) Notices advising limited-English-proficient persons of the  
14    availability of no-cost translation and interpretation services.

15    (5) Notices pertaining to the right and instructions on how to  
16    file a grievance.

17    (6) Uniform summaries of benefits of coverage required by  
18    Section 2715 of the federal Public Health Service Act (42 U.S.C.  
19    Sec. 300gg-11) and any rules or regulations promulgated  
20    thereunder.

21    (b) Once the enrolled non-English-language population in which  
22    the health care service plan has marketed or advertised meets a  
23    threshold listed in subparagraph (A) of paragraph (1) of subdivision  
24    (b) of Section 1367.04, the plan shall translate all vital documents  
25    as required under Section 1367.04 and the regulations adopted  
26    thereunder.

27    (c) A health care service plan shall use a trained and qualified  
28    translator for all written translations of marketing and advertising  
29    materials relating to health care service plan products, and for all  
30    the documents specified in subdivision (a).

31    SEC. 2. Section 10127.45 is added to the Insurance Code, to  
32    read:

33    10127.45. (a) Except as provided in subdivision (b), a health  
34    insurer offering policies of health insurance, as defined in Section  
35    106, shall not publish or distribute, or allow to be published or  
36    distributed on its behalf, any advertisement unless both the  
37    following conditions are met at least 30 days prior to the publishing

1 or distribution, or any shorter period as the department may allow  
2 by regulation:

3 (1) A true copy of the advertisement has first been filed with  
4 the department.

5 (2) The department, by notice, has not found the advertisement,  
6 wholly or in part, to be untrue, misleading, deceptive, or otherwise  
7 not in compliance with this code or the rules thereunder, and has  
8 specified any deficiencies.

9 (b) Except as provided in subdivision (c), a health insurer that  
10 has been admitted to transact health insurance under this part  
11 continuously licensed under this chapter for the preceding 18  
12 months may publish or distribute, or allow to be published or  
13 distributed on its behalf, an advertisement without having filed  
14 that advertisement with the department for prior approval, if the  
15 insurer and the material comply with each of the following  
16 conditions:

17 (1) The advertisement or a material provision thereof has not  
18 been previously disapproved by the department by written notice  
19 to the insurer and the insurer reasonably believes that the  
20 advertisement does not violate any requirement of this code or the  
21 rules thereunder.

22 (2) The insurer files a true copy of each new or materially  
23 revised advertisement, used by it or by any person acting on behalf  
24 of the insurer, with the department not later than 10 business days  
25 after publication or distribution of the advertisement or within such  
26 additional period as the department may allow by regulation.

27 (c) (1) If the department finds that any advertisement of a health  
28 insurer has materially failed to comply with this code or the rules  
29 thereunder, the department may, by order, require the insurer to  
30 publish, in the same or similar medium, an approved correction  
31 or retraction of any untrue, misleading, or deceptive statement  
32 contained in the advertising, and may prohibit the insurer from  
33 publishing or distributing, or allowing to be published or distributed  
34 on its behalf, the advertisement or any new materially revised  
35 advertisement without first having filed a copy thereof with the  
36 department, 30 days prior to the publication or distribution thereof,  
37 or any shorter period specified in the order.

38 (2) An order issued under this subdivision shall be effective for  
39 12 months from its issuance and may be renewed by order if the  
40 advertisements submitted under this subdivision indicate difficulties

1 of voluntary compliance with the applicable provisions of this  
2 code and the rules thereunder.

3 (d) A health insurer, insurance agent, or other person regulated  
4 under this code may, within 30 days after receipt of any notice or  
5 order under this section, file a written request for a hearing with  
6 the department.

7 (e) The department, by regulation, may classify plans and  
8 advertisements and exempt certain classes, wholly or in part, either  
9 unconditionally or upon specified terms and conditions or for  
10 specified periods, from the application of subdivisions (a) and (b).  
11 In no instance shall the department exempt new products or  
12 products offered by health insurers with a record within the past  
13 five years of violations of this section.

14 SEC. 3. Section 10133.10 is added to the Insurance Code, to  
15 read:

16 10133.10. (a) An insurer that markets, advertises, or produces  
17 educational materials for a health insurance policy, as defined in  
18 Section 106, in a language other than English that does not meet  
19 the minimum insured thresholds established under Sections 10133.8  
20 and 10133.9 or the regulations adopted thereunder, shall translate  
21 into that language all of the following documents:

22 (1) Welcome letters.

23 (2) Bill notices and statements.

24 (3) Applications to participate in a program or activity or to  
25 receive a benefit or service.

26 (4) Letters containing important information regarding eligibility  
27 or participation criteria.

28 (5) Notices advising limited-English-proficient persons of the  
29 availability of no-cost translation and interpretation services.

30 (6) Notices pertaining to the right and instructions on how to  
31 file a grievance.

32 (7) A matrix of the categories of health insurance benefits  
33 outlined in the insurance policy including copayments and  
34 coinsurance, exclusions, and limitations in the following sequence:  
35 deductibles, lifetime maximums, professional services, outpatient  
36 services, hospitalization services, diagnostic and therapeutic  
37 radiological services, preventative health services, emergency  
38 health care coverage including ambulance services, prescription  
39 drug coverage, durable medical equipment, mental health services,  
40 chemical dependancy services, home health services, other services

1 or the uniform summary of benefits of coverage required by Section  
2 2715 of the federal Public Health Service Act (42 U.S.C. Sec.  
3 300gg-11) and any rules or regulations promulgated thereunder.

4 (b) Once the insured non-English-language population in which  
5 the insurer has marketed or advertised, or for which the insurer  
6 produced education materials, meets a threshold listed in  
7 subparagraph (A) of paragraph (3) of subdivision (b) of Section  
8 10133.8, the insurer shall translate all vital documents as required  
9 under Sections 10133.8 and 10133.9 and the regulations adopted  
10 thereunder.

11 (c) An insurer shall use trained and qualified translators for the  
12 translation of all marketing and advertising materials relating to  
13 health insurance products and for all the documents specified in  
14 subdivision (a).

15 SEC. 4. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.